



Council Communication

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: GREGORY M. TILQUE, DEVELOPMENT SERVICES DIRECTOR

THROUGH: MARC SKOCYPEC, DEPUTY TOWN MANAGER

MEETING DATE: OCTOBER 4, 2012

SUBJECT: SHARED PARKING AGREEMENT FOR 310 N. GILBERT ROAD AND
TERMINATION OF THE MAHOGANY RUN DEVELOPMENT AND
LICENSE AGREEMENTS

STRATEGIC INITIATIVE: Economic Development

This item supports the Economic Development Strategic Initiative by updating an outdated agreement and accommodating the needs of the new property owner while still providing financial benefit to the Town.

LEGAL REVIEW

☒ Complete

☐ N/A

FINANCIAL REVIEW

☐ Complete

☒ N/A

RECOMMENDED MOTIONS

- A. MOTION TO ADOPT A RESOLUTION TERMINATING THE DEVELOPMENT AGREEMENT WITH WETMORE CVS, LLC, SUCCESSOR TO JOEL HIGGINBOTHAM.
- B. MOTION TO APPROVE A SHARED PARKING AGREEMENT WITH WETMORE CVS, LLC.

BACKGROUND/DISCUSSION

On March 25, 1997 the Town of Gilbert entered into a Development Agreement with Joel Higginbotham for a new restaurant project, named Mahogany Run, in the Heritage District at the northwest corner of Gilbert Road and Page Avenue. The agreement stated that "The Property shall be used solely for a seafood and steak specialty restaurant of approximately 7,100 square feet in size." The intent of that clause was to insure that we had a nice, sit-down restaurant and not a drive through and

since Mahogany Run was specializing in steak and seafood the language was appropriate. It also ensured that if the restaurant didn't succeed that the Town had some control over future uses. Over the years a number of restaurants have occupied that location after Mahogany Run decided to close its doors. Each has met the intent of the agreement with the original developer/operator even though they didn't all necessarily specialize in steak and seafood.

The agreement does allow for the assignment of the agreement to successors to the original agreement and, to date, the agreement has been communicated to each new owner. The new owner of the property, Wetmore CVS, LLC, (Mike Bennan, Manager) would like to cancel the original agreement since it is outdated and the building will now become two restaurants. Staff is comfortable that since the building has been a restaurant for 15 years now that it will continue to operate as a restaurant well into the future. In addition, the new operators who own both Postino East and a future Mexican restaurant that will move into the north half of the building in 2013, have been very successful and anticipate being there for years to come.

In addition to terminating the Development Agreement, the owner of the property wants to enter into a Shared Parking Agreement with the Town. The Town owns a 50' strip of land north of the building (between the building and Oregano's) addressed at 310 North Gilbert Road, and even though the parking lot is available to the general public Mr. Bennan and his partners would like it in writing that the patrons of their building can use the lot. They would also like some assurances that the Town will keep its parking lot in good repair and maintenance which we would do anyway as a matter of practice. In exchange for those assurances, the partnership will pay for the cost of all of the electricity provided to the two parking lot lights that are located on the Town's property.

The Shared Parking Agreement and the Resolution to terminate the Development Agreement and License Agreement were reviewed for form by Attorney Susan Goodwin.

FINANCIAL IMPACT

The financial impacts of this action are two-fold: the Town would continue to maintain its portion of the parking lot and the owner of the property to the south would pay for the electricity costs associated with the two parking lot lights located on the Town's parking lot located at 310 N. Gilbert Road.

STAFF RECOMMENDATION

Staff recommends that the Council enter into a Shared Parking Agreement with Wetmore CVS, LLC and approve the termination of the Mahogany Run Development Agreement.

Respectfully submitted,



Gregory M. Tilque, CEcD
Development Services Director

Attachments and Enclosures:

Mahogany Run Development Agreement

Mahogany Run License Agreement

Shared Parking Agreement

Resolution terminating Mahogany Run Development Agreement and License Agreement

When recorded return to:

Ms. Phyllis Alberty, Town Clerk
Town of Gilbert
1025 South Gilbert Road
Gilbert, Arizona 85296

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is entered into this 25 day of March, 1997, by and between Joel Higginbotham ("Developer") and the Town of Gilbert, Arizona, an Arizona Municipal Corporation ("Town").

RECITALS:

1. Town has adopted a Redevelopment Plan for the redevelopment of its historic downtown, an area known as the Heritage District.
2. The property set forth in Exhibit A ("Property") is located in the Heritage District.
3. A.R.S. Section 9-500.05 authorizes Town to enter into a Development Agreement with a landowner or other person having an interest in real property located in Town.
4. Developer will acquire the Property from Town and desires to develop the Property in accordance with all Town ordinances and standards and the requirements of this Agreement.
5. This Agreement is voluntarily entered into by the parties to further the purposes of the Town's Redevelopment Plan and to fulfill Town's need for a restaurant in the Heritage District; Developer acknowledges that the restaurant use described in this Agreement is an economically viable use at this location and no change in use will be permitted without following the normal notice and hearing procedures required in a rezoning case.
6. This Agreement is being entered into for the purposes of satisfying the above recitals and is consistent with the Town's Redevelopment Plan and General Plan.

AGREEMENT:

Now, therefore, in consideration of the foregoing and of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Property: This Agreement shall govern the development and use of the Property described in Exhibit A.

2. Use of Property: The Property shall be used solely for a seafood and steak specialty restaurant of approximately 7100 square feet in size.

3. Purchase of Property: Developer agrees to acquire the Property for the purchase price of \$50,000.00. All costs of escrow shall be paid for by the Town. The form of Purchase Contract pursuant to which Town will send to Developer and Developer will purchase from Town the Property is attached hereto as Exhibit B. The Purchase Contract will be executed by Town and Developer on or before August 1, 1997.

4. Town Responsibilities:

4.1 Town shall construct a screen wall and landscaping along the north and west sides of the Property in compliance with the requirements of the Planning and Zoning Commission, the Design Review Board and the Town Council.

4.2 Town will work with Developer to ensure that the restaurant has sufficient shared parking available for his use or that additional property will be made available for purchase in the future if the lack of parking dictates the need.

4.3 Town shall pay the cost of a survey of the Property.

4.4 Town shall be responsible for constructing modifications to Gilbert Road to accommodate access to the Property from Gilbert Road.

5. Developer Responsibilities:

5.1 Developer shall develop the Property in accordance with this Agreement and the Redevelopment Plan and all applicable Town standards.

5.2 Construction: All construction on the Property shall be architecturally compatible with buildings in the area and with the Redevelopment Plan.

5.3 Approvals and Reviews: Approvals as appropriate by the Planning and Zoning Commission, the Design Review Board and the Town Council shall be required for all phases of the development of the Property.

5.4 Developer shall pay the costs of any required relocation and undergrounding of utilities, both for development of the Property and construction of off-site

improvements and streetscape improvements. Developer shall make all required dedications for utilities and off-site improvements upon request of Town.

5.5 Commencement of Construction: Developer shall commence construction for the development of the Property no later than August 1, 1997.

5.6 Parking Lot Lighting: Developer shall be responsible for the installation and maintenance of all required parking lot lighting.

5.7 Replat of Property: Developer acknowledges the Property currently consists of more than one platted lot. Developer shall be responsible for the costs of replatting said lots.

6. General Provisions:

6.1 Notices: All notices, filings, consents, approvals under the communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by registered or certified U.S. Postal Service mail, return receipt requested, postage prepaid, to:

To Town:

Town Manager
Town of Gilbert
1025 South Gilbert Road
Gilbert, Arizona 85296

To Developer:

Joel Higginbotham
1830 East Elliot Road
Suite 104
Tempe, Arizona 85284

Or such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten days before the date on which the change is to become effective.

6.2 Mailing Effective: Notices given by mail shall be deemed delivered 72 hours following deposit in the U.S. Postal Service in the manner set forth above.

6.3 Waiver: No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same of any other provision of this Agreement. Nothing herein or in the stipulation shall constitute or be deemed to be a waiver by Developer of their rights to request future rezonings or changes in development standards for all or any portion of the Property pursuant to Town procedures and requirements existing at the time of the request.

6.4 Attorneys Fees and Costs: If legal action by either party is required because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys and court costs.

6.5 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

6.6 Headings: The description headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

6.7 Entire Agreement: This Agreement, including exhibits, constitutes the entire Agreement between the parties and shall not be changed or added to except as agreed to by the parties in writing. All prior and contemporaneous agreements, representations and understandings of the parties, oral or writing, are superseded by this Agreement.

6.8 Amendment or Cancellation of the Agreement: Except as otherwise provided herein, this Agreement may be amended or canceled in whole or in part and with respect to all or any portion of the Property only with the mutual consent of Town and fee title owner of that portion of the Property to which the amendment or cancellation will be applicable. Within ten days after any such amendment or cancellation of this Agreement, the amendment or cancellation shall be recorded by Town in the official records of Maricopa County.

6.9 Severability: If any provision of this Agreement is declared void or unenforceable, the provisions will be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by the severability.

6.10 Governing Law: This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

6.11 Liquidation: No later than ten days after this Agreement has been executed by Town and Developer it shall be recorded in its entirety by Town in the official records of Maricopa County, Arizona.

6.12 Default, Remedies: If any party to this Agreement breaches any provision of this Agreement the nondefaulting party shall be entitled to all remedies available at both law and in equity including specific performance.

6.13 Authority: The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement and Developer represents to

Town that by entering into this Agreement, Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the Town thereof.

6.14 Binding Effect: No portion of this Agreement shall be assignably without Town consent. This Agreement is binding on successors, assigns and transferees of any interest in the Property and shall be incorporated by reference in any instrument purporting to convey any instrument to the Property.

6.15 Third Parties: There are no third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

TOWN OF GILBERT

Wilburn J. Brown
Wilburn J. Brown, Mayor

DEVELOPER

Joel Higginbotham
Joel Higginbotham
Nancy Higginbotham
Nancy Higginbotham

ACKNOWLEDGMENT

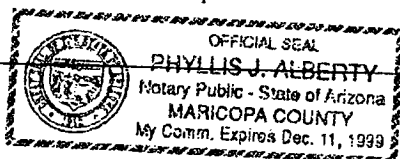
STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 25 day of March, 1997, before me, the undersigned Notary Public, personally appeared Wilburn J. Brown who acknowledged himself to be the Mayor of Gilbert, Arizona and that he as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Phyllis J. Alberty
Notary Public

My Commission Expires:



ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 4th day of April, 1997, before me, the undersigned
Notary Public, personally appeared Joel Higginbotham, who acknowledged himself to be the
developer of Exhibit A
and that he as such, being authorized so to do, executed the foregoing instrument for the
purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Marjorie K Downey
Notary Public



ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 4th day of April, 1997, before me, the undersigned
Notary Public, personally appeared Nancy Higginbotham, who acknowledged herself to be the
developer of Exhibit A
and that she as such, being authorized so to do, executed the foregoing instrument for the
purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Marjorie K Downey
Notary Public

My Commission Expires:

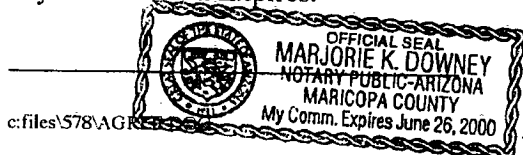
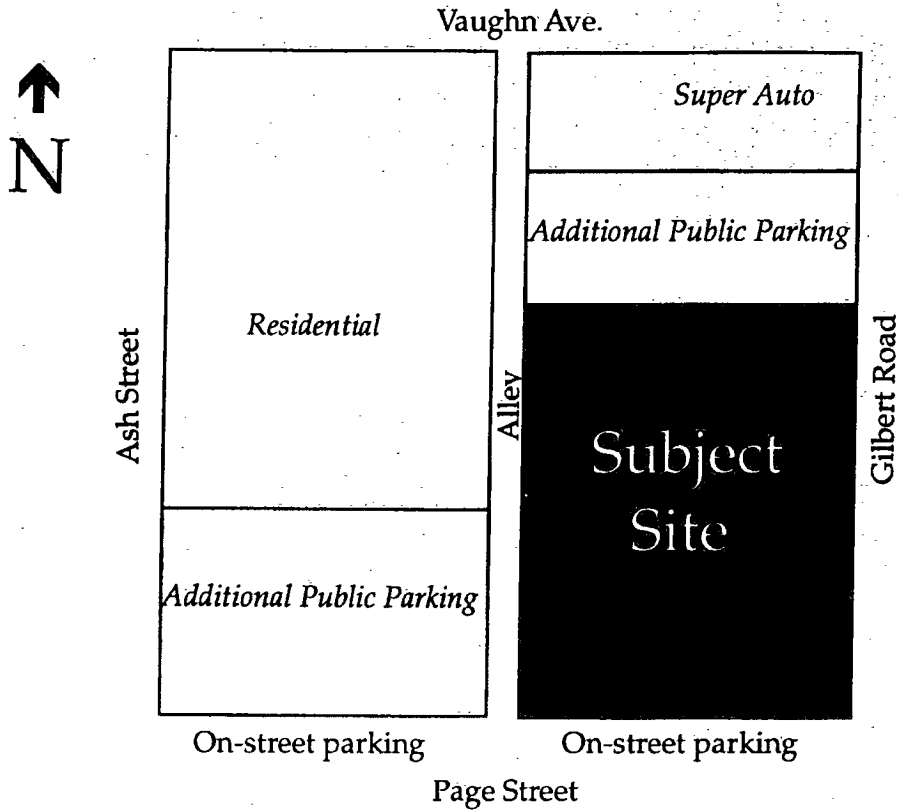


Exhibit A

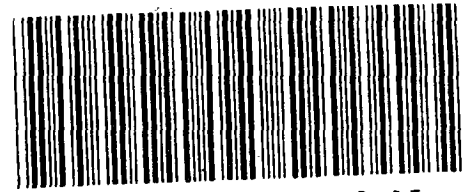


The site's dimensions are approximately 200' X 172' and it is bounded by Gilbert Road on the east, Page Street on the south, the alley on the west and the north property line is about 50' south of the Super Auto property. Exact site boundaries are pending final ALTA Survey results and negotiations with the buyer/developer, Joel Higgenbotham.

Map not to scale

When recorded return to:

Phyllis Alberty, Town Clerk
Town of Gilbert
1025 South Gilbert Road
Gilbert, Arizona 85296



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

97-0593051 08/28/97 09:19

RECORDED 1 OF 1

LICENSE AGREEMENT

This License Agreement is made this 8 day of August, 1997, by and between the Town of Gilbert, Arizona (hereinafter "Licensor") and Joel and Nancy Higginbotham (hereinafter "Licensee").

In consideration of the covenants and agreements contained herein, Licensor grants Licensee a revocable license conveying the non-exclusive right and privilege to enter upon and use the property of Licensor under the following terms and conditions:

1. Licensed Property: The location of the property described as "additional public parking" is as set forth on the attached Exhibit A (the "Licensed Property"). Licensor will retain ownership, title and use of the Licensed Property, consistent with the terms of this License.
2. Purpose: To provide shared parking for Licensee's seafood and steak specialty restaurant located at the northwest corner of Gilbert and Page.
3. Compensation: Any license fee shall be waived in consideration for the repairs and maintenance to be done by Licensee and in the spirit of community cooperation.
4. Maintenance: Licensor shall keep the Licensed Property in good condition and will repair and maintain it at its sole expense.
5. Assignment: This License shall not be assigned, in whole or in part by the Licensee, without the written permission of the Licensor. Licensor may assign its interest herein to any successor in interest to the Licensed Property.
6. Term: This License Agreement shall remain in effect until the restaurant operated pursuant to the Development Agreement between Licensee and Licensor is no longer operated as a restaurant in the sole discretion of the Licensor. Licensor may terminate this License Agreement if Licensee violates any terms and conditions of either this License or the Development Agreement by giving thirty (30) days notice of such termination to Licensee. Upon termination, the improvements constructed thereon will become the property of Licensor or Licensor's successor in interest.

7. Indemnification: Licensee shall indemnify and hold harmless Licensors from and against any liability, claim, injury or damage resulting or arising out of Licensee's use or occupancy of the Licensed Property.

8. Service of Notice: All notices and demands required or permitted by this License shall be in writing and shall be deemed to have been given properly when sent by certified mail (postage pre-paid), delivered personally or given by telefacsimile to the party at the address below or to such other address as may be furnished:

Notices to Licensors

Town Manager
Town of Gilbert
1025 South Gilbert Road
Gilbert, Arizona 85296

Notices to Licensee

Joel Higginbotham
1830 East Elliot Road
Suite 104
Tempe, Arizona 85284

9. Binding Effects; Recordation: It is the intention of the parties that this License shall run with the land and be binding upon the heirs and successors of the parties. This License shall be recorded in the office of the official records of Maricopa County, Arizona.

10. Conflict of Interest: In the event Licensee elects to cancel this Agreement due to a conflict of interest as outlined in A.R.S. § 38-511, as amended, Licensee agrees to immediately give notice thereof to Licensors.

IN WITNESS WHEREOF, the parties hereto have executed this License this 5th day of August, 1997.

LICENSOR:

Town of Gilbert

By


Cynthia L. Dunham, Mayor

LICENSEE

By


Joel Higginbotham

By

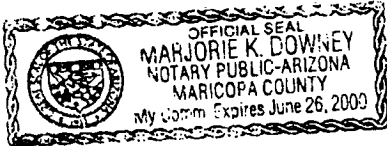

Nancy Higginbotham

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, this 5th day of August, 1997, by Joel and Nancy Higginbotham, who personally appeared and acknowledged themselves to be the Managers of Philly's Key Club Restaurant, and that they as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Marjorie K. Downey
Notary Public

My Commission Expires:

6/26/2000

ATTEST:

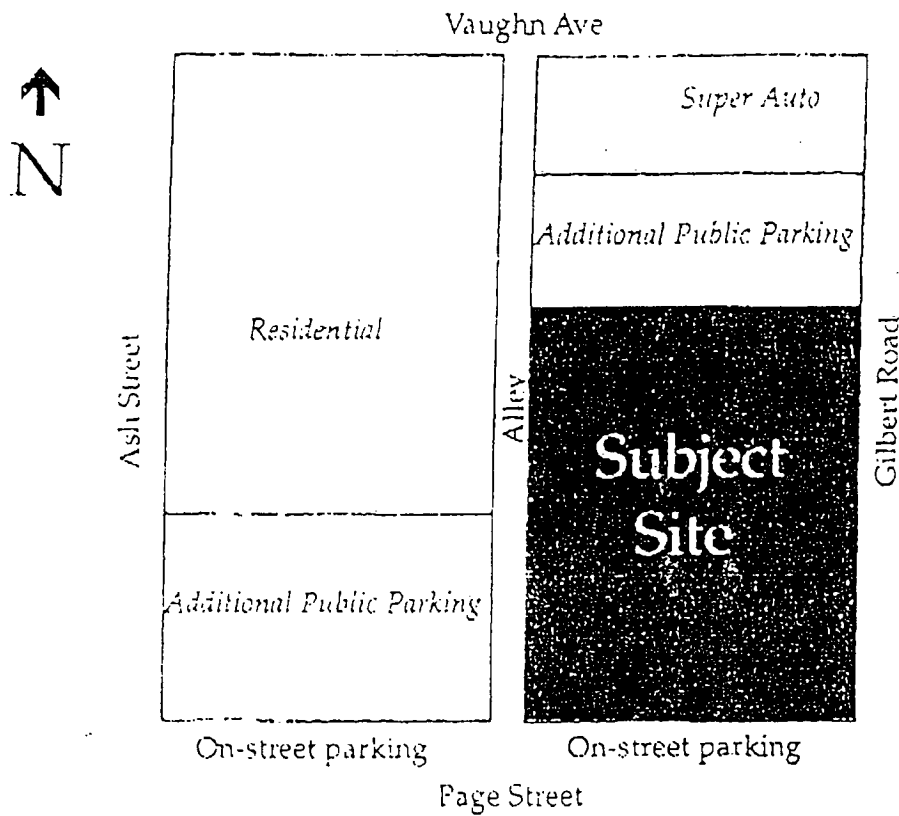
Phyllis Alberty
Phyllis Alberty, Town Clerk

APPROVED AS TO FORM:

Susan D. Goodwin
Martinez & Curtis, P.C.
City Attorneys
By Susan D. Goodwin

c:\578\document\lcagmhig.doc

Exhibit A



The site's dimensions are approximately 200' X 172' and it is bounded by Gilbert Road on the east, Page Street on the south, the alley on the west and the north property line is about 50' south of the Super Auto property. Exact site boundaries are pending final ALTA Survey results and negotiations with the buyer/developer, Joel Higgenbotham.

Map not to scale

SHARED PARKING AGREEMENT

This Shared Parking Agreement is made this ____ day of _____, 2012, by and between the Town of Gilbert, Arizona (hereinafter "Owner") and Wetmore CVS, LLC (hereinafter "User").

In consideration of the covenants and agreements contained herein, Owner authorizes User to use certain property of Owner for customer parking purposes under the following terms and conditions:

1. Parking Lot: Owner permits User to use the parking lot located at 310 N. Gilbert Road, Gilbert, Arizona, legally described on the attached Exhibit A (the "Parking Lot"). Owner will retain ownership, title and use of the Parking Lot.

2. Maintenance; Electricity: Owner shall keep the Parking Lot in good repair and maintenance, as determined by Owner and at Owner's sole expense. User shall pay the cost of all electricity provided to the two Parking Lot lights located on the Parking Lot.

3. Assignment: This Agreement shall not be assigned, in whole or in part by the User, without the written permission of the Owner. Owner may assign its interest herein to any successor in interest to the Parking Lot.

4. Term: This Agreement shall remain in effect until revoked by either Owner or User, at their sole discretion, upon giving the other party thirty (30) days' written notice.

5. Service of Notice: All notices and demands required or permitted by this License shall be in writing and shall be deemed to have been given properly when sent by certified mail (postage pre-paid), delivered personally or given by telefacsimile to the party at the address below or to such other address as may be furnished:

Notices to Owner

Town Manager
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

Notices to User

Wetmore CVS, LLC
7373 E. Doubletree Ranch Rd.
Suite 200
Scottsdale, AZ 85258

6. Conflict of Interest: In the event User elects to cancel this Agreement due to a conflict of interest as outlined in A.R.S. § 38-511, as amended, User agrees to immediately give notice thereof to Owner.

IN WITNESS WHEREOF, the parties hereto have executed this License
this ____ day of _____, 2012.

OWNER:
Town of Gilbert

By: _____
John W. Lewis, Mayor

USER:
Wetmore CVS, LLC
By: Pacific Oakmark Investors, LLC
(Manager)

By: _____
Mike Bennan, Manager

ATTEST:

Catherine Templeton, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC.
Town Attorneys
By Susan D. Goodwin

EXHIBIT A
Legal Description

Lot Three (3), Block Three (3), GILBERT TOWNSITE, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 7 of Maps, Page 13.

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, TERMINATING THE DEVELOPMENT AGREEMENT DATED MARCH 25, 1997 BETWEEN THE TOWN OF GILBERT AND JOEL HIGGINBOTHAM RELATED TO THE DEVELOPMENT OF REAL PROPERTY FOR RESTAURANT PURPOSES LOCATED AT 302 N. GILBERT ROAD, GILBERT, ARIZONA; FURTHER TERMINATING A LICENSE AGREEMENT DATED AUGUST 8, 1997 RELATED TO PARKING FOR CUSTOMERS OF THE RESTAURANT; PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS; AND PROVIDING FOR SEVERABILITY..

WHEREAS, the Town of Gilbert and Joel Higginbotham owner entered into a Development Agreement dated March 25, 1997 recorded in the Maricopa County Recorder's Office at _____ ("Development Agreement"), pursuant to A.R.S. § 9-500.05 and a License Agreement dated August 8, 1997 recorded in the Maricopa County Recorder's Office at 97-0593051 authorizing the use of certain property owned by Gilbert for parking purposes ("License Agreement").

WHEREAS, Wetmore CVS, LLC is the current owner of the property that is the subject of the Development Agreement and has succeeded to the rights and obligations of the Development Agreement and License Agreement.

WHEREAS, Gilbert and Wetmore CVS, LLC desire to terminate the Development Agreement by execution of a Termination of Development Agreement in the form attached hereto as Exhibit A and to terminate the License Agreement by execution of a Termination of License Agreement in the form attached hereto as Exhibit B.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, that the Development Agreement is hereby terminated and the Termination of Development Agreement attached hereto as Exhibit A, be and is hereby approved and the Mayor is authorized and directed to execute said Termination of Development Agreement; and

FURTHER RESOLVED, that that the License Agreement is hereby terminated and the Termination of License Agreement attached hereto as Exhibit B, be and is hereby approved and the Mayor is authorized and directed to execute said Termination of Development Agreement and the Termination of License Agreement; and

FURTHER RESOLVED, that the Town Clerk be and she is hereby authorized and directed to record a copy of the Termination of Development Agreement and the Termination of License Agreement with the Maricopa County Recorder within ten days after the date of its execution by the parties in accordance with the terms of the Agreement.

FURTHER RESOLVED, that all resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

FURTHER RESOLVED that if any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT,
ARIZONA THIS _____ DAY OF _____, 2012.

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this _____ day of _____, 2012.

John W. Lewis, Mayor

ATTEST:

Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, PLC.

Town Attorneys

By: _____

EXHIBIT A
TERMINATION OF DEVELOPMENT AGREEMENT

When Recorded Return to:

Catherine A. Templeton, Town Clerk
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

TERMINATION OF DEVELOPMENT AGREEMENT

This Termination of Development Agreement is entered into by and between the Town of Gilbert, Arizona and Wetmore CVS, LLC this ____ day of _____, 2012.

RECITALS

A. The Town of Gilbert, Arizona ("Gilbert") and Joel Higginbotham ("Prior Owner") entered into a Development Agreement dated March 25, 1997 recorded in the Maricopa County Recorder's Office at _____ ("Development Agreement"), pursuant to A.R.S. § 9-500.05.

B. Owner is the successor in interest to the Prior Owner and succeeded to the rights and obligations of the Development Agreement, which governs the development of property located at 302 N. Gilbert Road, Gilbert, Arizona ("Property").

C. Gilbert and Owner desire to terminate the Development Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. The Development Agreement dated March 25, 1997 recorded in the Maricopa County Recorder's Office at _____ is hereby terminated.

2. Nothing in this Termination of Development Agreement shall modify or diminish the requirements of the Gilbert Land Development Code with respect to the development of the Property.

DATED the date and year first above written.

TOWN OF GILBERT

Wetmore CVS, LLC
By: Pacific Oakmark Investors, LLC
(Manager)

By: John W. Lewis, Mayor
Michael Bennan, Manager

By:

ATTEST:

Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.
Town Attorneys
By:

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be _____, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be _____, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT B
TERMINATION OF LICENSE AGREEMENT

When Recorded Return to:

Catherine A. Templeton, Town Clerk
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

TERMINATION OF LICENSE AGREEMENT

This Termination of License Agreement is entered into by and between the Town of Gilbert, Arizona and _____ this ____ day of _____, 2012.

RECITALS

A. The Town of Gilbert, Arizona ("Gilbert") and Joel and Nancy Higginbotham ("Prior Owner") entered into a License Agreement dated August 8, 1997 recorded in the Maricopa County Recorder's Office at 97-0593051 authorizing the use of certain property owned by Gilbert for parking purposes ("License Agreement").

B. Owner is the successor in interest to the Prior Owner and succeeded to the rights and obligations of the License Agreement.

C. Gilbert and Owner desire to terminate the License Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

The License Agreement dated August 8, 1997 which is recorded in the Maricopa County Recorder's Office at 97-0593051 is hereby terminated.

DATED the date and year first above written.

TOWN OF GILBERT

Wetmore CVS, LLC
By: Pacific Oakmark Investors, LLC
(Manager)

By: John W. Lewis, Mayor

By: Mike Bennan, Manager

ATTEST:

Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.
Town Attorneys
By:

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be _____, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be

_____, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

106614-1